

APPEAL NO. 041533
FILED AUGUST 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was begun on March 3, 2004, and resumed on May 21, 2004, with the record closing on that date. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury; that the claimed date of injury was _____; that because there was no compensable injury there can be no disability; and that the claimant did not timely report her claimed injury to the employer and did not have good cause for failing to do so.

The claimant appealed, basically on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § Rule 143.3(e) (Rule 143.3(e)) (formerly Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

Records of the Commission indicate that the hearing officer's decision was mailed to the claimant on May 27, 2004. Pursuant to Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed; in this case the deemed receipt is June 1, 2004. The claimant states in her request for review that she actually received the decision of the hearing officer on June 2, 2004. However, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. See Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Thus, the appeal needed to be

mailed no later than June 22, 2004, the 15th day after the deemed date of receipt. The claimant's appeal is postmarked June 23, 2004, and thus is untimely.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision is final pursuant to Section 410.169.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge